IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

CRL.A.No. 988 of 2002()

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SC.343/2000 of III ADDL. SESSIONS COURT (ADHOC) FAST TRACK-I, THRISSUR

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APPELLANT: ACCUSED

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DOMINIC, S/O. OUSEPH, MANJALI HOUSE,
MUPLIYAM, THRISSUR DISTRICT.

BY ADV. SRI.A.C.DEVY
SRI.SANJAYAN.K.R.

RESPONDENTS: COMPLAINANT

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STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, VARANDARAPPILLY
(CRIME NO.110/97) THRISSUR THROUGH PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.R.UDAYABHANU, J**

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Crl.A.No.988 of 2002

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Dated this the 18th day of September, 2007

**JUDGMENT**

The appellant is the accused who stands convicted for the offence under Section 55 of the Abkari Act and sentenced to undergo R.I. for one year and to pay fine of Rs.1 lakh and in default, to undergo R.I. for three months.

2. The prosecution case is that on 9.10.1997 at 3.30 p.m. the accused was found carrying 15 bottles of brandy of 375 ml. each, kept in a carton in a big shopper.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 5, Exts. P1 to P5 and MOs' 1 to 3 series.

4. The prosecution case is that the offence was detected by PW1, the Sub Inspector of Police, Varandharappally who arrested the accused and prepared Ext. P1 seizure mahazar. He has testified as to the incident. Three bottles were taken as sample. One of the sample was taken forwarded for chemical analysis and as per Ext. P4 report of the chemical analyst the sample contained 43.58% by volume of ethyl alcohol. In Ext. P1

it is mentioned that the carton contained the printing of Kerala Alcoholic Products Ltd. It is also mentioned that the bottle contained Indian made foreign liquor. It was sealed bottles and had labels. PWs' 2 and 3, the Police Constables, were accompanied by PW1 have testified in the same terms as PW1 as to the recovery and the preparation of Ext. P1 seizure mahazar, and also identified MOs'. PW4, the independent witness, has admitted the signature in Ext. P1 seizure mahazar but he did not support the prosecution. PW5, the another independent witness has also turned hostile. I find that in view of the evidence of PWs' 1 to 3 the detection stands proved. The evidence of PWs' 1 to 3 did not contain material contradictions or inconsistencies. The quantity ceased amounted to 5.65 litres of Indian made foreign liquor.

5. Counsel has relied on the decision in **Sabu vs. State of Kerala (2003(2) KLT 173)** wherein this court has held that the only offence is that the accused is in possession of excess quantity of Indian made foreign liquor then permissible under law. The offence under Section 63 will be attracted. In the present case, I find that there is no contention for the

prosecution that the liquor ceased is illicit liquor. Hence, I find that the only offence attracted is that under Section 63 of the Abkari Act. In the circumstances, the conviction is liable to be converted into one under Section 63 of the Abkari Act. Hence, the conviction under Section 58 is herewith set aside. The accused is sentenced to pay a fine of Rs.5,000/- for the offence under Section 63 of the Abkari Act and in default, to undergo simple imprisonment for one month.

The criminal appeal is disposed of accordingly.

**K.R.UDAYABHANU,**
**JUDGE**

csl